

FIRST REGULAR SESSION

HOUSE BILL NO. 913

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES COOPER (120) (Sponsor), VILLA, YOUNG, WALSH, DAUS,
SPRENG, MEINERS, ZWEIFEL, KOMO AND VOGT (Co-sponsors).

Read 1st time February 20, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2102L.01I

AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to the advertising of liquor at retail businesses, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 311.070, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 311.070, to read as follows:

311.070. 1. Distillers, wholesalers, winemakers, brewers or their employees, officers or agents shall not, except as provided in this section, directly or indirectly, have any financial interest in the retail business for sale of intoxicating liquors, and shall not, except as provided in this section, directly or indirectly, loan, give away or furnish equipment, money, credit or property of any kind, except ordinary commercial credit for liquors sold to such retail dealers. However, notwithstanding any other provision of this chapter to the contrary, for the purpose of the promotion of tourism, a distiller whose manufacturing establishment is located within this state may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises where sold; and provided further that the premises so licensed shall be in close proximity to the distillery and may remain open between the hours of 6:00 a.m. and midnight, Monday through Saturday and between the hours of 11:00 a.m. and 9:00 p.m., Sunday. The authority for the collection of fees by cities and counties as provided in section 311.220, and all other laws and regulations relating to the sale of liquor by the drink for consumption on the premises where

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 sold, shall apply to the holder of a license issued under the provisions of this section in the same
16 manner as they apply to establishments licensed under the provisions of section 311.085,
17 311.090, or 311.095.

18 2. Any distiller, wholesaler, winemaker or brewer who shall violate the provisions of
19 subsection 1 of this section, or permit his employees, officers or agents to do so, shall be guilty
20 of a misdemeanor, and upon conviction thereof shall be punished as follows:

21 (1) For the first offense, by a fine of one thousand dollars;

22 (2) For a second offense, by a fine of five thousand dollars; and

23 (3) For a third or subsequent offense, by a fine of ten thousand dollars or the license of
24 such person shall be revoked.

25 3. As used in this section, the following terms mean:

26 (1) "Consumer advertising specialties", advertising items that are designed to be carried
27 away by the consumer, such items include, but are not limited to: trading stamps, nonalcoholic
28 mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches,
29 printed recipes, pamphlets, cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

30 (2) "Equipment and supplies", glassware (or similar containers made of other material),
31 dispensing accessories, carbon dioxide (and other gasses used in dispensing equipment) or ice.
32 "Dispensing accessories" include standards, faucets, cold plates, rods, vents, taps, tap standards,
33 hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves;

34 (3) "Point-of-sale advertising materials", advertising items designed to be used within
35 a retail business establishment **for an extended period of time** to attract consumer attention to
36 the products of a distiller, wholesaler, winemaker or brewer. Such materials include, but are not
37 limited to: posters, placards, designs, inside signs (electric, mechanical or otherwise), window
38 decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back
39 bar mats, thermometers, clocks, calendars and alcoholic beverage lists or menus. **Such**
40 **materials shall not include those that are used for short periods of time, such as banners**
41 **and decorations reflecting a particular season or a limited-time promotion;**

42 (4) "Product display", wine racks, bins, barrels, casks, shelving or similar items the
43 primary function of which is to hold and display consumer products;

44 (5) "Promotion", an advertising and publicity campaign to further the acceptance and sale
45 of the merchandise or products of a distiller, wholesaler, winemaker or brewer.

46 4. Notwithstanding other provisions contained herein, the distiller, wholesaler,
47 winemaker or brewer, or their employees, officers or agents may engage in the following
48 activities with a retail licensee licensed pursuant to this chapter or chapter 312, RSMo:

49 (1) The distiller, wholesaler, winemaker or brewer may give or sell product displays to
50 a retail business if all of the following requirements are met:

51 (a) The total value of all product displays given or sold to a retail business shall not
52 exceed three hundred dollars per brand at any one time in any one retail outlet. There shall be
53 no combining or pooling of the three hundred dollar limits to provide a retail business a product
54 display in excess of three hundred dollars per brand. The value of a product display is the actual
55 cost to the distiller, wholesaler, winemaker or brewer who initially purchased such product
56 display. Transportation and installation costs shall be excluded;

57 (b) All product displays shall bear in a conspicuous manner substantial advertising
58 matter on the product or the name of the distiller, wholesaler, winemaker or brewer. The name
59 and address of the retail business may appear on the product displays; and

60 (c) The giving or selling of product displays may be conditioned on the purchase of
61 intoxicating beverages advertised on the displays by the retail business in a quantity necessary
62 for the initial completion of the product display. No other condition shall be imposed by the
63 distiller, wholesaler, winemaker or brewer on the retail business in order for such retail business
64 to obtain the product display;

65 (2) Notwithstanding any provision of law to the contrary, the distiller, wholesaler,
66 winemaker or brewer may give or sell any point-of-sale advertising materials, **temporary**
67 **banners**, and consumer advertising specialties to a retail business if all the following
68 requirements are met:

69 (a) The total value of all point-of-sale advertising materials [and consumer advertising
70 specialties] given [or sold] to a retail business **by a distiller, wholesaler, winemaker, or brewer**
71 shall not exceed five hundred dollars per year, per brand, per retail outlet. The value of
72 point-of-sale advertising materials [and consumer advertising specialties] is the actual cost to the
73 distiller, wholesaler, winemaker or brewer who initially purchased such item. Transportation and
74 installation costs shall be excluded;

75 (b) All point-of-sale advertising materials and consumer advertising specialties shall bear
76 in a conspicuous manner substantial advertising matter about the product or the name of the
77 distiller, wholesaler, winemaker or brewer. The name, address and logos of the retail business
78 may appear on the point-of-sale advertising materials or the consumer advertising specialties;
79 and

80 (c) The distiller, wholesaler, winemaker or brewer shall not directly or indirectly pay or
81 credit the retail business for using or distributing the point-of-sale advertising materials or
82 consumer advertising specialties or for any incidental expenses arising from their use or
83 distribution;

84 (3) A malt beverage wholesaler or brewer may give a gift not to exceed a value of one
85 thousand dollars per year, or sell something of value to a holder of a temporary permit as defined
86 in section 311.482;

87 (4) The distiller, wholesaler, winemaker or brewer may sell equipment or supplies to a
88 retail business if all the following requirements are met:

89 (a) The equipment and supplies shall be sold at a price not less than the cost to the
90 distiller, wholesaler, winemaker or brewer who initially purchased such equipment and supplies;
91 and

92 (b) The price charged for the equipment and supplies shall be collected in accordance
93 with credit regulations as established in the code of state regulations;

94 (5) The distiller, wholesaler, winemaker or brewer may install dispensing accessories at
95 the retail business establishment, which shall include for the purposes of intoxicating and
96 nonintoxicating beer equipment to properly preserve and serve draught beer only and to facilitate
97 the delivery to the retailer the brewers and wholesalers may lend, give, rent or sell and they may
98 install or repair any of the following items or render to retail licensees any of the following
99 services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer
100 faucets and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer
101 and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable
102 coil boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box
103 overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons,
104 ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear
105 and tear and a complete record of equipment furnished and installed and repairs and service
106 made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering
107 same for a period of not less than one year;

108 (6) The distiller, wholesaler, winemaker or brewer may furnish, give or sell coil cleaning
109 service to a retailer of distilled spirits, wine or malt beverages;

110 (7) A wholesaler of intoxicating liquor may furnish or give and a retailer may accept a
111 sample of distilled spirits or wine as long as the retailer has not previously purchased the brand
112 from that wholesaler, if all the following requirements are met:

113 (a) The wholesaler may furnish or give not more than seven hundred fifty milliliters of
114 any brand of distilled spirits and not more than seven hundred fifty milliliters of any brand of
115 wine; if a particular product is not available in a size within the quantity limitations of this
116 subsection, a wholesaler may furnish or give to a retailer the next larger size;

117 (b) The wholesaler shall keep a record of the name of the retailer and the quantity of each
118 brand furnished or given to such retailer;

119 (c) For the purposes of this subsection, no samples of intoxicating liquor provided to
120 retailers shall be consumed on the premises nor shall any sample of intoxicating liquor be opened
121 on the premises of the retailer except as provided by the retail license;

(d) For the purpose of this subsection, the word "brand" refers to differences in brand name of product or differences in nature of product; examples of different brands would be products having a difference in: brand name; class, type or kind designation; appellation of origin (wine); viticulture area (wine); vintage date (wine); age (distilled spirits); or proof (distilled spirits); differences in packaging such a different style, type, size of container, or differences in color or design of a label are not considered different brands;

(8) The distiller, wholesaler, winemaker or brewer may package and distribute intoxicating beverages in combination with other nonalcoholic items as originally packaged by the supplier for sale ultimately to consumers; notwithstanding any provision of law to the contrary, for the purpose of this subsection, intoxicating liquor and wine wholesalers are not required to charge for nonalcoholic items any more than the actual cost of purchasing such nonalcoholic items from the supplier;

(9) The distiller, wholesaler, winemaker or brewer may sell or give the retail business newspaper cuts, mats or engraved blocks for use in the advertisements of the retail business;

(10) The distiller, wholesaler, winemaker or brewer may in an advertisement list the names and addresses of two or more unaffiliated retail businesses selling its product if all of the following requirements are met:

(a) The advertisement shall not contain the retail price of the product;

(b) The listing of the retail businesses shall be the only reference to such retail businesses in the advertisement;

(c) The listing of the retail businesses shall be relatively inconspicuous in relation to the advertisement as a whole; and

(d) The advertisement shall not refer only to one retail business or only to a retail business controlled directly or indirectly by the same retail business;

(11) Notwithstanding any other provision of law to the contrary, distillers, winemakers, wholesalers, brewers or retailers may conduct a local or national sweepstakes/contest upon a licensed retail premise. However, no money or something of value may be given to the retailer for the privilege or opportunity of conducting the sweepstakes or contest;

(12) The distiller, wholesaler, winemaker or brewer may stock, rotate, rearrange or reset the products sold by such distiller, wholesaler, winemaker or brewer at the establishment of the retail business so long as the products of any other distiller, wholesaler, winemaker or brewer are not altered or disturbed;

(13) The distiller, wholesaler, winemaker or brewer may provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages;

(14) The distiller, wholesaler, winemaker or brewer participating in the activities of a retail business association may do any of the following:

- 158 (a) Display its products at a convention or trade show;
159 (b) Rent display booth space if the rental fee is the same paid by all others renting similar
160 space at the association activity;
161 (c) Provide its own hospitality which is independent from the association activity;
162 (d) Purchase tickets to functions and pay registration fees if such purchase or payment
163 is the same as that paid by all attendees, participants or exhibitors at the association activity; and
164 (e) Make payments for advertisements in programs or brochures issued by retail business
165 associations at a convention or trade show if the total payments made for all such advertisements
166 do not exceed three hundred dollars per year for any retail business association;
- 167 (15) [The distiller, wholesaler, winemaker or brewer] **Distillers, wholesalers,**
168 **winemakers, or brewers** may sell [its] other merchandise which does not consist of intoxicating
169 beverages to [a] retail [business if the following requirements are met:
170 (a) The distiller, wholesaler, winemaker or brewer shall also be in business as a bona fide
171 producer or vendor of such merchandise;
172 (b) The merchandise shall be sold at its fair market value;
173 (c) The] **businesses provided that such** merchandise is not sold in combination with
174 distilled spirits, wines or malt beverages, except as provided in **subdivision (8) of subsection**
175 **4 of this section. Notwithstanding any provision of law to the contrary, the division of**
176 **alcohol and tobacco control shall have no regulatory authority over distillers, wholesalers,**
177 **winemakers, or brewers with respect to the sales, marketing, or promotional practices**
178 **associated with merchandise which does not consist of intoxicating beverages;**
179 [(d) The acquisition or production costs of the merchandise shall appear on the purchase
180 invoices or records of the distiller, wholesaler, winemaker or brewer; and
181 (e) The individual selling prices of merchandise and intoxicating beverages sold to a
182 retail business in a single transaction shall be determined by commercial documents covering the
183 sales transaction;]
- 184 (16) The distiller, wholesaler, winemaker or brewer may sell or give [an] **a permanent**
185 outside sign to a retail business if the following requirements are met:
186 (a) The sign, **which shall be constructed of metal, glass, wood, plastic, or other**
187 **durable, rigid material, with or without illumination, or painted or otherwise printed onto**
188 **a rigid material or structure, shall** bear in a conspicuous manner substantial advertising matter
189 about the product or the name of the distiller, wholesaler, winemaker or brewer;
190 (b) The retail business shall not be compensated, directly or indirectly, for displaying the
191 sign; [and]
192 (c) The cost of the sign, **if given to a retailer,** shall not exceed four hundred dollars; **and**

(d) Temporary banners of a seasonal nature or promoting a specific event shall not be constructed to be permanent outdoor signs and may be provided to retailers at no charge;

(17) A wholesaler may, but shall not be required to, exchange for an equal quantity of identical product or allow credit against outstanding indebtedness for intoxicating liquor with alcohol content of less than five percent by weight or nonintoxicating beer that was delivered in a damaged condition or damaged while in the possession of the retailer;

(18) To assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight or nonintoxicating beer in its undamaged original carton from the retailer's stock, if the wholesaler replaces the product with an equal quantity of identical product;

(19) In addition to withdrawals authorized pursuant to subdivision (18) of this subsection, to assure and control product quality, wholesalers at the time of a regular delivery may, but shall not be required to, withdraw, with the permission of the retailer, a quantity of intoxicating liquor with alcohol content of less than five percent by weight and nonintoxicating beer in its undamaged original carton from the retailer's stock and give the retailer credit against outstanding indebtedness for the product if:

(a) The product is withdrawn at least thirty days after initial delivery and within twenty-one days of the date considered by the manufacturer of the product to be the date the product becomes inappropriate for sale to a consumer; and

(b) The quantity of product withdrawn does not exceed the equivalent of twenty-five cases of twenty-four twelve-ounce containers; and

(c) To assure and control product quality, a wholesaler may, but not be required to, give a retailer credit for intoxicating liquor with an alcohol content of less than five percent by weight or nonintoxicating beer, in a container with a capacity of four gallons or more, delivered but not used, if the wholesaler removes the product within seven days of the initial delivery; and

(20) Nothing in this section authorizes consignment sales.

5. All contracts entered into between distillers, brewers and winemakers, or their officers or directors, in any way concerning any of their products, obligating such retail dealers to buy or sell only the products of any such distillers, brewers or winemakers or obligating such retail dealers to buy or sell the major part of such products required by such retail vendors from any such distiller, brewer or winemaker shall be void and unenforceable in any court in this state.

6. Notwithstanding any other provisions of this chapter to the contrary, a distiller or wholesaler may install dispensing accessories at the retail business establishment, which shall include for the purposes of distilled spirits, equipment to properly preserve and serve premixed

229 distilled spirit beverages only. To facilitate delivery to the retailer, the distiller or wholesaler
230 may lend, give, rent or sell and the distiller or wholesaler may install or repair any of the
231 following items or render to retail licensees any of the following services: coils and coil
232 cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping heads, hoses, valves
233 and other minor tapping equipment components, and damage caused by any delivery excluding
234 normal wear and tear. A complete record of equipment furnished and installed and repairs or
235 service made or rendered shall be kept by the distiller or wholesaler furnishing, making or
236 rendering the same for a period of not less than one year.

237 7. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
238 contrary, distillers, winemakers, brewers or their employees or officers shall be permitted to
239 make contributions of money or merchandise to a licensed retail liquor dealer that is a charitable
240 or religious organization as defined in section 313.005, RSMo, or an educational institution if
241 such contributions are unrelated to such organization's retail operations.

242 8. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
243 contrary, a brewer or manufacturer, its employees, officers or agents may have a financial interest
244 in the retail business for sale of intoxicating liquors and nonintoxicating beer at entertainment
245 facilities owned, in whole or in part, by the brewer or manufacturer, its subsidiaries or affiliates
246 including, but not limited to, arenas and stadiums used primarily for concerts, shows and sporting
247 events of all kinds.

248 9. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
249 contrary, for the purpose of the promotion of tourism, a wine manufacturer, its employees,
250 officers or agents located within this state may apply for and the supervisor of liquor control may
251 issue a license to sell intoxicating liquor, as defined in this chapter, by the drink at retail for
252 consumption on the premises where sold, if the premises so licensed is in close proximity to the
253 winery. Such premises shall be closed during the hours specified under section 311.290 and may
254 remain open between the hours of 9:00 a.m. and midnight on Sunday.

255 10. Notwithstanding any other provision of this chapter or chapter 312, RSMo, to the
256 contrary, for the purpose of the promotion of tourism, a person may apply for and the supervisor
257 of liquor control may issue a license to sell intoxicating liquor by the drink at retail for
258 consumption on the premises where sold, but seventy-five percent or more of the intoxicating
259 liquor sold by such licensed person shall be Missouri-produced wines received from
260 manufacturers licensed under section 311.190. Such premises may remain open between the
261 hours of 6:00 a.m. and midnight, Monday through Saturday, and between the hours of 11:00 a.m.
262 and 9:00 p.m. on Sundays.

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